

## ASSESSMENTS AND YOUR COMMUNITY



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### WHAT ARE ASSESSMENTS?

Assessments are the amount of money that each owner in a common ownership community ("COC"), such as a condominium or homeowner association, must pay to help meet the total expenses of the COC. Assessments cover such costs as the maintenance and repair of the buildings, parking lots, elevators, playgrounds, pools, and other common elements owned by the COC. They also pay for other costs such as management services, insurance, and utilities. Assessments are the financial lifeblood of the community.

### WHY DO I HAVE TO PAY ASSESSMENTS?

When you sign the contract to buy a home in a COC, you sign a binding promise to obey all the rules of the community. The basic rules are found in its Declaration and Bylaws, which are part of the deeds for your property and for every other property in that community. These rules include the right of the COC to charge each owner for his or her share of the total cost of operating the COC.

### WHO DECIDES WHAT THE ASSESSMENTS ARE?

Your COC's rules govern the basic procedures for setting assessments. Most COC rules give the Board of Directors the duty of preparing an annual budget to present to the members. The budget must list the COC's annual expenses and the income needed to pay for those expenses and will include the amount of assessments due from each member. Usually, the Board has the authority to adopt the budget and the assessment amount.

However, most COC rules also state that if the members disagree with a decision of the Board, the members have the right to submit a petition that will require the Board to call a special meeting at which the members themselves can vote on whether to confirm or repeal the Board's decision.

### ARE THERE ANY LIMITS ON HOW MUCH A BOARD CAN RAISE THE ASSESSMENTS?

Yes. Most COC rules will set a limit on how much the assessments can go up at one time without the approval of the membership. Some rules tie the maximum increase to the Cost of Living Index, while others set a fixed amount, such as 15%. If the Board wishes to go over that limit, it must call a special meeting of the membership to vote on it.

### WHAT ABOUT EMERGENCIES?

Once the budget is adopted, the Board has the right to increase the assessments to cover unexpected expenses, but it cannot raise them by more than 15% over the amount set in the budget unless it gets the approval of the members or unless there is an emergency that creates a threat to the health or safety of the members or of the COC.

### WHAT SHOULD ASSESSMENTS COVER?

Assessments should be sufficient to pay for the COC's operating expenses for the coming year, plus a reasonable amount to cover repairs and improvements that will be needed some time in the future (the replacement reserve). By planning

now to pay for such expenses, the COC can minimize the need for sudden large increases in its assessments. The COC should also set aside money to cover emergencies and expected cost increases such as rising utility fees (the operating reserve).

### WHAT HAPPENS IF I DON'T PAY MY ASSESSMENTS?

Most COC rules allow the COC to charge late fees and interest against owners who don't pay their assessments on time. These extra fees are added to the assessments due. In addition, the rules may allow the COC to deny use of the common elements, such as swimming pools or parking, to those owners and even to cut off utility services covered by the assessments. The COC may also take legal action against the owners, *and the rules might allow the COC to charge the owners with the costs of its attorney's fees if it does so.*

A very important assessment collection tool that unit owners should know about is the Maryland Contract Lien Act. Under this law, **a COC can put a lien on an owner's property for nonpayment of assessments without going to court. All that is necessary is for the COC to give a 30-day warning. Once the COC has a lien, it can foreclose on the property.**

### WHAT ARE MY LEGAL RIGHTS UNDER THE CONTRACT LIEN ACT?

The Contract Lien Act (Section 14-201 of the Maryland Real Property Article) says that if an owner has not paid the assessments in full, the COC may give the owner a notice by certified mail warning the owner of the default, stating the total amount due, and advising the owner that if he doesn't pay that amount within 30 days, the COC can file a lien against the property. (The exact details of the notice are specified in the law.) **If the owner disagrees that he owes all or part of the money, the owner *must* sue the COC in the Circuit Court before the 30 day deadline.** (We advise the owner to hire a lawyer in order to do this properly.) If the owner does not pay in full, and does not file a complaint

against the COC in the Circuit Court, the COC can then simply file a lien in the land records against the property involved, without having to get any court approval. The owner will not be able to sell the property without paying the lien off, and the COC can start foreclosure whenever it wishes.

The law also allows the COC to require the owner to pay the entire assessments for the current budget year in advance. In addition, the COC is allowed to add its legal costs and attorney's fees to the amount due. Both these sums have to be paid within the 30 day deadline. Such amounts can double or triple the amount the owner has to pay.

**DO I HAVE THE RIGHT TO WITHHOLD MY PAYMENTS BECAUSE THE COC HAS VIOLATED THE RULES BY NOT MAINTAINING THE PROPERTY OR FOR SOME OTHER GOOD REASON?**

**No!** It doesn't matter why you want to withhold payment. If you don't go to court and get a judge's approval to withhold the assessments, the COC can use the Contract Lien Act against you, or it can sue you.

In addition, the courts of Maryland and of many other states have taken the strict position that in most cases an owner cannot use a COC's violation of the rules as an excuse not to pay his or her assessments in full. This is called the Rule of Independent Covenants. The only claims the courts might recognize in a legal action as valid defenses for not paying assessments are billing errors by the COC and assessments that were not adopted according to the COC's rules. Even if the owner has such claims, he still must get the court's approval not to pay, or the COC can use the Contract Lien Act against him or sue him.

**WHAT ARE MY RIGHTS IF I HAVE A DISPUTE WITH MY COC?**

Most unit owners in Montgomery County are protected by Chapter 10B of the Montgomery County Code, "Common Ownership Communities." This law creates the Commission

on Common Ownership Communities ("CCOC"), which has the legal authority to receive complaints between residents and the governing bodies of COC's, to hold hearings on them, and to make legally-binding decisions resolving them. (Currently, this law does not apply within the City of Gaithersburg, which does not have a program of its own.) Under this law, unit owners can file complaints against their Boards of Directors for violating the law or the COC's own rules (and the Boards can file complaints against members who violate the rules). **An owner who believes that his COC has adopted an assessment in violation of its rules or of the law can file a complaint with the CCOC and ask that the new assessment be repealed.**

**IF I FILE A COMPLAINT WITH THE CCOC ABOUT AN IMPROPER ASSESSMENT, DO I STILL HAVE TO PAY IT WHILE THE CASE IS PENDING?**

No. Section 10B-9(e) of the County Code creates an "automatic stay" that prevents the COC from attempting to collect or enforce a disputed assessment until such time as the CCOC can hold a hearing and issue a decision. The owner must still pay the amount of the assessment that is not in dispute. Thus, the COC is not allowed to use the Contract Lien Act after the owner files a complaint with the CCOC.

However, the COC has the right to sue the owner in court to collect the assessment, even if the owner has filed a complaint with the CCOC. In that case, either party can ask the court to postpone the court proceedings until the CCOC can decide the matter. It will be up to the judge to decide on such a request.

**WHAT IF I DON'T AGREE WITH THE AMOUNT THAT THE COC WANTS ME TO PAY?**

The CCOC has no authority to take complaints involving billing errors. It only has the authority to rule on whether the assessments were adopted and enforced according to the law and the COC's own rules.

If an owner wishes to complain about how the COC has calculated his bill, he should sue the

COC in court, especially if the COC has given him the 30-day notice under the Contract Lien Act.

**MY COC BELONGS TO A MASTER COC. CAN THE MASTER COC BILL ME FOR ASSESSMENTS THAT I ALREADY PAID MY OWN COC?**

Possibly—it depends on the rules of the two communities. In many cases, the "master" association rules give it the right to bill the local association members directly for any dues that their local association owes, but has not paid, to the master association. This will be true even if the individual owners have paid their local association the full amount that the local association billed them.

**HOW CAN I GET MORE INFORMATION?**

Read your rules, and visit the CCOC website. Copies of the County Code are available through the website of the Office of the County Attorney. Printed copies of the County and the Maryland Codes are available in the public libraries.



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